

Resolution No.: 13-1496  
Introduced: December 1, 1998  
Adopted: December 1, 1998

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: County Council

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Subject: Approval of Executive Regulation 19-98, for the Productivity  
Housing Program

Background

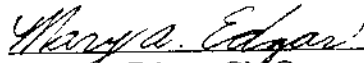
1. Executive Regulation 19-98 is an Executive Regulation to establish administrative procedures for the Productivity Housing Program. The regulation sets forth requirements, guidelines, and specifications for the implementation of this program.
2. Bill 24-96 created a revised Productivity Housing Program for certain commercial and industrial zones. Eligible zones for this program include C-1 through C-4 and I-3 and I-4 zones. Bill 24-96 was enacted on September 17, 1996.
3. Executive Regulation 19-98 was advertised in the Montgomery County Register as required. No comments were received.
4. The County Council received Executive Regulation 19-98 on October 22, 1998 under Method 1 of §2A-15 of the County Code.
5. Method 1 requires the Council by resolution, to approve or disapprove the proposed regulation. The regulation does not become effective unless approved by the Council.
6. The Planning, Housing, and Economic Development Committee reviewed Executive Regulation 19-98 on November 23, 1998 and recommends approval.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

Executive Regulation 19-98, for the Productivity Housing Program is approved.

This is a correct copy of Council action.

  
Mary A. Edgar, CMC  
Secretary of the Council



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject</b>	<b>Number</b>
Productivity Housing Administrative Regulations	19-98
<b>Originating Department</b>	<b>Effective Date</b>
Department of Housing and Community Affairs	December 1, 1998

Montgomery County Regulation on:  
**PRODUCTIVITY HOUSING PROGRAM REQUIREMENTS**  
 Department of Housing and Community Affairs

Issued by: County Executive  
 Regulation No. 19-98

Authority Code Section 25B - 18(d)  
 Supersedes: None  
 Council Review: Method (1) under Code section 2A-15  
 Register Vol 15 No. 9

Comment Deadline: September 30, 1998  
 Effective Date: December 1, 1998

Sunset Date: None

## SUMMARY:

This regulation establishes the requirements for administration of the Productivity Housing Program.

## ADDRESSES:

Written comments should be sent to:  
 Eric Larsen, MPDU Coordinator  
 Department of Housing and Community Affairs  
 100 Maryland Avenue, 4<sup>th</sup> Floor  
 Rockville, MD 20850

## CONTACT:

For further information or to obtain a copy of this regulation, call Eric Larsen at 217-3705.



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<b>Originating Department</b> Department of Housing and Community Affairs	<b>Effective Date</b> December 1, 1998

## BACKGROUND INFORMATION:

Section 25 B-18(d) of the Montgomery County Code 1994, as amended requires that the County Executive adopt regulations for the administration of the Productivity Housing Program; this regulation sets forth the program's requirements and administrative guidelines.

### Section I

#### Definitions

The following words and phrases as used in this regulation and in Chapter 25 B have the following meanings:

- 1.1 Area wide median income means the income level determined to represent the median income for the Washington Metropolitan Statistical Area (MSA) as published by the U.S. Department of Housing and Urban Development adjusted for household size.
- 1.2 Consumer Price Index means the latest published version of the Consumer Price Index for all Urban Consumers (CPI-U) of the U.S. Department of Labor or any similar index selected by the County Executive.
- 1.3 Control period means the time as designated in Section 25B-21 that a productivity housing unit is subject to resale price controls or rental rate restrictions: for sale units are controlled for 10 years and rental units for 20 years.
- 1.4 County Property means any real or personal property owned by the County, improved or unimproved, including any interest in the property such as air rights. County Property includes property owned by the County and financed by a Parking Lot District.
- 1.5 Date of original sale means the date of settlement for purchase of a productivity housing unit.
- 1.6 Date of original rental means the date that the first lease of a productivity housing unit takes effect.
- 1.7 Department means the Montgomery County Department of Housing and Community Affairs (DHCA).



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- 1.8 Developer means a person or other legal entity that seeks to develop a productivity housing project.
- 1.9 Director means the Director of DHCA or the Director's designee.
- 1.10 Dwelling Unit means a building or part of a building that provides complete living facilities for cooking, sanitation, and sleeping.
- 1.11 Housing Initiative Fund means the fund established under Section 25B-9.
- 1.12 Productivity Housing Law means Chapter 25B Article IV of the Montgomery County Code, 1994, as amended.
- 1.13 Productivity Housing Project means a project to build dwelling units for sale or rent at one location where at least 35% of the dwelling units are sold or rented to households with incomes below the area-wide median income.
- 1.14 Productivity Housing Unit (PHU) means a dwelling unit in a productivity housing project that is subject to rent limits or sales controls under Article IV, Chapter 25B.
- 1.15 Program means the productivity housing program.

## Section 2

### Productivity Housing Agreements

- 2.1 The developer must sign a written agreement to provide Productivity Housing Units (PHU's) before a building permit may be issued. The agreement must contain:



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(a) The name of the subdivision, the marketing name if different than the subdivision name, or the apartment or condominium name, when applicable. A copy of the approved preliminary plan or record plat and a special exception approval, if required, must be provided with the agreement.

(b) A plan for the staging of construction of all dwelling units that is consistent with the approved special exception and the site plan approval agreement. The staging plan must be sequenced so that:

- (1) The PHUs are built along with or before other dwelling units;
- (2) no more than 25 percent of the market rate dwelling units are built before the PHU's are built;
- (3) the pace of PHU production must reasonably coincide with the construction of market rate units;
- (4) and the last building constructed must not exclusively contain PHUs.

(c) The requirement that the developer will execute and record covenants pursuant to Section 25B-22 of the Productivity Housing Law prior to the sale or lease of any PHUs.

2.2 The productivity housing agreement must be recorded by the developer in the Land Records of the County promptly upon its execution. The developer must provide the County with a copy of the recorded agreement immediately thereafter. The agreement will be released from the Land Records by the County at such time as all required PHU covenants have been recorded in the Land Records.

2.3 The Department must determine that the productivity housing agreement meets the requirements of the Productivity Housing Law and any executive regulations. Any revisions to the agreement must be approved in writing by the Department.



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- 2.4 A copy of the executed productivity housing agreement must be submitted to the Department of Permitting Services (DPS) with the first building permit application in the subdivision. DPS must not issue building permits in a subdivision having a productivity housing requirement unless the PHUs are part of the staging plan in the signed agreement.

## Section 3

### Productivity Housing Unit Requirements

- 3.1 The type (rental or sale) and size (number of bedrooms) must be in conformance with the following requirements:
- (a) in a single-family dwelling unit productivity housing project, each PHU must have two or more bedrooms;
  - (b) in a multi-family dwelling unit productivity housing project, the ratio of all efficiency and one-bedroom PHU's to all PHUs must not exceed the ratio of all market-rate efficiency and one-bedroom units to the total number of market-rate units in the development.
  - (c) in a project in which the developer intends for one or more sections of the subdivision or a particular type of housing to be entirely rental units, the developer must meet the following requirements:
    - (1) the developer must submit a plan for the entire project which designates the location and number of rental market rate units and the location and number of the rental PHUs.
    - (2) in a project containing only single-family dwellings, the ratio of rental PHU's to all PHU's must not exceed the ratio of rental market rate units to the total number of market rate units.



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- (3) in a subdivision containing both single-family and multi-family dwellings, the ratio of rental single-family PHU's to all single family PHU's must not exceed the ratio of rental market rate, single-family units to all market rate single family units; and the ratio of rental, multi-family PHU's to all multi-family PHU's must not exceed the ratio of rental market rate, multi-family units to all market rate, multi-family units.

- 3.2 PHU's that are sold must be occupied by the owner as his or her primary residence during the control period. Rental units must not be sublet during the control period unless permitted by the developer, and unless sublet to an income qualified household approved by the Department.

## Section 4

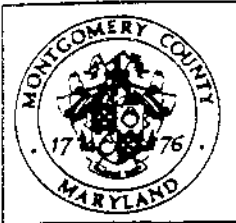
### Establishment of Sale Prices and Rental Rates

- 4.1 The maximum sale prices for PHU's must not exceed 175% of the sale price set for a comparable moderately price dwelling unit (MPDU) calculated in accordance with Chapter 25A and the MPDU sale price regulation in effect at the time the unit is offered for sale by the developer.
- 4.2 The maximum rental rates will be set annually on or about March 1st. Rental rates will be set based on the affordability at 75 percent of the area wide median income for a four person family adjusted for family size by the factors indicated below:

<u>Family Size</u>	<u>Adjustment Factor</u>
1 person	.7
2 people	.8
3 people	.9
4 people	1.0
5 people	1.1

- 4.3 The method for computing the maximum allowable rents for multi-family PHU's (elevator and non-elevator units in all buildings) is based on the calculation described below. Maximum allowable rents including tenant paid utilities may not exceed 30% of the calculated gross household income. Household size will be estimated based on 1.5 persons per bedroom.





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## Number of Bedrooms

efficiency  
1 bedroom  
2 bedrooms  
3 bedrooms

## Adjustment Factor

1 person - .70 of area median income  
1.5 persons - .75 of area median income  
3 people - .90 of area median income  
4.5 persons - 1.05 of area median income

- a. Step 1. Determine the maximum income based on 75% of the area wide median income adjusted for the unit size.  
(Median income x .75) multiplied by the unit size adjustment factor.
- b. Step 2. Determine the maximum monthly housing expense. Divide the adjusted annual income for the unit size by 12 months to determine the monthly income. Calculate 30% of the monthly income to determine the monthly housing expense.

$$\left[ \frac{\text{Maximum annual income adjusted for the unit size}}{12} \right] \times .30$$

- c. Step 3. Determine the monthly rent by subtracting the monthly utility allowance from the monthly housing expense. Utility allowances are those published in the U. S. Department of Housing and Urban Development for Rental Assistance (Section 8) and Public Housing Utility Allowances Chart.
- 4.4 The rents that may be charged are those in effect at the time the Department approves the rental offering agreement for the PHUs.
- 4.5 At least 35 percent of the units in a productivity housing project must be rented to qualified households at the approved rental rates.
- 4.6 If some utility charges are paid by the developer as part of the project's expenses, requests for an increased PHU rental rate will be considered by the Department. Estimates of annual expenses for the additional utilities must be certified by the appropriate utility company and by the developer. After the first year of operation, utility charges will be based on the actual, average cost of the utility expenses for the previous 12 months.



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- 4.7 If laundry washer and dryer equipment is provided in the market rate units, this equipment must be provided in each PHU. No charge for this equipment is allowed unless market rate units are similarly charged. Nothing in this section prohibits a developer from installing coin operated laundry facilities within the common areas of multi-family buildings.
- 4.8 The developer is not permitted to charge a fee for unstructured, automobile parking. Structured parking spaces may be offered as an option to the PHU occupants at the monthly rate normally charged by the developer for the project. If structured parking is included in the rent for a market rate unit, the Department will establish the rent for a structured parking space based on the cost of constructing the parking space. Surface parking on the property will be provided to PHU occupants in accordance with the Zoning Ordinance, Chapter 59, Montgomery County Code, 1994 as amended.
- 4.9 Maximum allowable rent levels for PHU's will be adjusted in subsequent years of rental occupancy at levels that do not exceed the annual increase in the area wide median income. Only one increase is permitted each year.

## Section 5

### Sale and Rental Procedures

- 5.1 The developer must offer PHUs for sale or rent through the Department by completing an offering agreement on the form provided by the Department. The following information must be provided:
- (a) a description of the PHUs including the number, unit types, and size by area and number of bedrooms, and other relevant details of the PHUs;
  - (b) the addresses, legal descriptions, and tax account numbers of the PHUs;
  - (c) a recorded subdivision plat, a copy of the approved preliminary plan, and two copies of the site development plan designating the location of the PHUs;

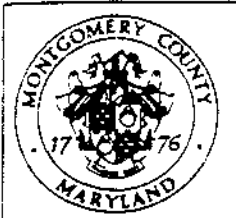


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- (d) a copy of the declaration of covenants, which are fully executed and ready for recording;
  - (e) a completed sale price calculation sheet and price list of options, if the houses are to be sold, and a copy of the floor plans and exterior elevation designs of each unit type;
  - (f) the dates when PHUs will be delivered for settlement or rental occupancy;
  - (g) other information the Department may deem necessary
- 5.2 The first PHU sale units must be available for settlement and occupancy in compliance with all County building code requirements and in conformance with the PHU agreement within one year of the date of acceptance of the offering agreement by the Department.
- 5.3 The first PHU rental units must be available for rental occupancy in compliance with all County building and occupancy code requirements and in conformance with the PHU agreement within 120 days of acceptance of the offering agreement by the Department.
- 5.4 PHUs offered for sale will be sold to eligible households on a first come, first served basis unless the Director determines that a lottery selection procedure should be used to establish an order of sale list of eligible households.
- 5.5 PHUs offered for rent by the developer may be leased on a first come, first served basis to eligible households. The developer must comply with all applicable fair housing laws and must rent the available PHUs only to eligible persons.
- 5.6 The developer must sign and forward PHU covenants to the Department before selling or renting any PHUs. The covenants must be in the form required by the Department and include the restrictions contained in the Productivity Housing Law. The covenants will run with the land for the entire control period and until all requirements of the Productivity Housing Law have been met. The covenants will be binding on the developer, all assignees, mortgagees, buyers, and all other parties that receive title to the property. The covenants must contain a provision restricting the amount for which a PHU can be refinanced.



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- 5.7 PHU covenants will be recorded by the Developer and must be recorded so that they are senior to all instruments securing permanent financing. Every deed transferring the PHU must reference the PHU covenants citing where they are recorded in the Land Records by liber and folio. If the covenants cannot be recorded on the PHU in conformance with this regulation, then the unit will not be considered as having met the requirement of Section 25B-22 of the Productivity Housing Law.
- 5.8 The developer must submit a copy of the initial sales contract or lease agreement, and income eligibility documentation (the two most recent income tax returns and copies of recent paycheck stubs, of all those listed on the sales contract or lease agreement) to the Department within 14 days of entering into a sales contract or lease agreement. The final settlement sheet and a copy of the deed must be sent to the Department within 21 days after settlement on the sale of the property. The developer must submit all of the required documents in correct form for the unit to fulfill the requirements of the Productivity Housing Law.

## Section 6

### Resale and Refinancing PHU's During the Control Period

- 6.1 An owner of a PHU must notify the Department in writing of the owner's intent to sell or refinance the PHU during the control period and request a resale price determination. The owner must provide an itemized list of all capital improvements and upgrades for which credit is requested as part of the resale price. The owner must permit a representative of the Department to inspect the PHU. A PHU must not be resold or refinanced for an amount greater than the approved maximum resale price determined by the Department.
- 6.2 The Department will calculate the maximum resale price for the PHU in accordance with the following requirements:
- (a) The original price for the PHU plus an allowance for inflation during the period from the date of original settlement to the date of the resale or refinancing price request. The allowance is based upon the rate of increase in the CPI-U. Fees or points paid for permanent mortgage financing that were added to the original purchase price will be deducted from the calculation of the resale price unless the terms of the resale include an assumption of the mortgage.



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- (b) The current fair market value of capital improvements made to a unit subsequent to the date of purchase as determined by the Department. Fair market value is defined as the actual and reasonable costs of materials, professional fees, contractor's costs, and permit fees associated with furnishing and installing improvements that increase the value of the property. The fair market value of improvements may include reimbursement for the value of labor performed by the owner, but not for the purchase of tools and equipment used to install the improvements. The Department may establish standard fair market values for certain improvements. The standard values may be used by the Department rather than cost data or records of the improvements submitted by the owner. Where there is evidence of physical deterioration, abnormal wear and tear, or obsolescence because of neglect, abuse, or insufficient maintenance, the value allowed for the improvements may be reduced to account for the depreciation of the improvements or equipment. Normal owner maintenance, general repair work, and decorative items or work will not be included in the resale price determination. Improvements must be permanent in nature and clearly add to the market value of the house or property. All improvements claimed must be documented with receipts, contracts or other evidence supporting their value. Appliances which were purchased as an option at the time of the original sale of the PHU or added subsequently to the unit will be depreciated on a ten year straight-line basis.

- 6.3 The owner may appeal the resale price determination to the Director or the Director's designee. The appeal should include any documentation that the owner wishes to use in support of the appeal. The owner has the right to have an appraisal of the improvements, conducted by a certified appraiser, the cost of which must be paid by the owner. The appraisal must consider only the value of the added improvements. The Director or the designee will rule on the appeal and must notify the owner within 14 days of receiving the notice of appeal.



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## Section 7

### Resale After the Control Period

- 7.1 The first sale of a PHU after the expiration of the control period must be made in accordance with the following procedures:
- (a) The owner must provide the following information to the Department at least 14 days prior to settlement:
    - (1) a copy of the sales contract;
    - (2) a schedule of capital improvements made to the property since the original sale or rental or the resale of the PHU together with costs and supporting documentation;
    - (3) a copy of the real estate broker's listing agreement.
  - (b) The Department will determine the increase in value of the unit attributable to the increase in the cost of living, the fair market value of allowable, capital improvements made to the property, the real estate sales commission not to exceed six percent, and calculate the amount of the excess proceeds that will be realized on the sale of the unit in accordance with Section 25 B-21 of the Productivity Housing Law.
  - (c) The Department will notify the owner and the settlement attorney of the calculation of the excess profit and the amount that must be paid to the Housing Initiative Fund.
- 7.2 The required portion of the excess proceeds of the sale must be paid to the Housing Initiative Fund prior to recording the deed of conveyance. The seller is responsible for ensuring that the payment is disbursed in accordance with this regulation and the Productivity Housing Law. A copy of the final settlement sheet for this transfer of ownership must be sent to the Department within 14 days of the date of settlement on the property transfer. The Department will release the productivity housing covenants and liens recorded in the land records within 30 days of receipt of a certified check made payable to the Housing Initiative Fund, the settlement document, and the affidavit signed by the seller and purchaser certifying the terms of the sale.



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- 7.3 Failure of the owner to notify the Department of a sale, obtain a determination of excess proceeds, and pay the required portion of the excess proceeds to the Housing Initiative Fund constitutes a default under the covenants. Remedies for a default may include but are not limited to invalidation of the sale, placing a lien on the property, and subjecting the owner to all appropriate legal action necessary to recover the portion of the excess proceeds to be paid to the Housing Initiative Fund.

## Section 8

### Sale by Foreclosure

- 8.1 A mortgagee, deed of trust holder, or other secured party who has initiated foreclosure proceedings on a PHU must notify the Department in writing not later than 15 days prior to the date of the foreclosure sale. The notification must contain the time, date and place of the sale, the balance of the note, the amount of payments which are in arrears and the basis for the default or cause of action.
- 8.2 The Department will determine the approved resale price of the unit upon receiving notice of the foreclosure. Any proceeds obtained as a result of the foreclosure that exceed the approved resale price must be paid to the Housing Initiative Fund. If the foreclosed PHU is a rental unit, the Department will calculate the approved resale price based upon the sales price that would have been permitted at the time the unit was initially rented. The Department will notify the note holder and the foreclosure auditor handling the foreclosure proceeding in writing of the approved resale price.
- 8.3 The advertisement of the foreclosure sale must state that, upon completion and court ratification of the foreclosure sale made in accordance with the provisions and requirements of this regulation and the Productivity Housing Law, the PHU controls and restrictions recorded in the covenants will be released. The agent conducting the sale must advertise the foreclosure and announce at the foreclosure sale that the property to be sold is a PHU. The agent must send the Department a copy of the foreclosure sale notification. The Department must notify the County Attorney immediately after receiving notice of the foreclosure sale.
- 8.4 The agent or auditor handling the foreclosure must notify the Department in writing within 14 days of the sale that the sale has occurred in accordance with Rule 2-543, Maryland Rules of Procedure, the price which was bid at the sale, the purchaser's name and address, and must send a copy of the auditor's report of the foreclosure to the Department.



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- 8.5 If the foreclosure sale of the PHU occurs within 10 years of the date of the original sale of the PHU, the agent or auditor must ensure that the proceeds of the sale are disbursed so that the amount paid for the PHU in excess of the approved resale price is paid into the Housing Initiative Fund. If the foreclosure sale occurs 10 years or more after the date of the original sale of the PHU and if it is the first sale of the PHU after the ten year control period, one half of the amount paid for the PHU in excess of the approved resale price must be paid into the Housing Initiative Fund.
- 8.6 In the event that the approved resale price will be inadequate to permit the secured party to be paid the reasonable cost of foreclosure in addition to the balance of the foreclosed debt, the Director is authorized to increase the approved resale price to an amount necessary to cover such costs. The note holder's encumbrances together with all senior liens must not exceed the approved resale price. The note holder must initiate foreclosure proceedings within 120 days of the payment delinquency to avoid excessive interest expenses.
- 8.7 The County Attorney must send a claim for any surplus proceeds in excess of the approved resale price to the auditor within the time limits contained in the notification of the foreclosure sale.
- 8.8 If the amount of the payment is equal to or exceeds the amount of the claim submitted by the County Attorney, the Director will, within 30 days of receiving the payment, have documents that release the PHU covenants recorded in the Land Records.

## Section 9

### Enforcement

- 9.1 In the event that the developer does not construct the PHUs according to the terms of an approved Productivity Housing Agreement, the Department will contact the developer to determine the reasons for noncompliance. If the developer demonstrates sufficient reasons for not constructing the PHUs as agreed, the Department may agree to amend the Agreement. The Department may take the following factors into consideration in determining whether to amend the agreement:
- (a) economic conditions have caused all or part of the project to be postponed;
  - (b) sewer and water service has been delayed for all or a portion of the project;





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- (c) unusual weather or changes in physical site conditions have made part or all of the site temporarily unbuildable;
- (d) an action or decision by a public agency has required a deviation from the approved construction staging plan; or
- (e) such other good reasons that may be approved by the Director on a case-by-case basis.

9.2 If the developer cannot demonstrate sufficient reasons for failing to meet the terms of the approved agreement, the Department may request that building permits for the project be withheld or revoked until the PHUs contained in the approved agreement are constructed or until the developer has obtained approval of an amended agreement. After issuance of building permits for a project has been halted or existing building or occupancy permits suspended or revoked, issuance of permits by DPS may not be resumed until both the Department and DPS are satisfied that the applicant is in compliance with terms of the approved agreement. An occupancy permit must not be issued for any unit in a subdivision when the subdivision does not comply with the Productivity Housing Law or this Executive Regulation.

9.3 Any prior approval of a preliminary plan of subdivision, development plan, or site plan may be suspended or revoked by the Planning Board if the developer fails to meet any requirement of the Productivity Housing Law, this executive regulation, or fails to comply with the site plan enforcement agreement.

9.4 The Director may take legal action to stop or cancel any transfer of a PHU if any party to the transfer does not comply with all requirements of the Productivity Housing Law and this executive regulation. The Director may recover any funds improperly obtained from the sale or rental of a PHU in violation of the Productivity Housing Law and this regulation. In addition to or instead of any other available remedy, the Director may take legal action to:

- (a) enjoin an owner who violates this regulation or the Productivity Housing Law, or any covenant signed or order issued under this regulation, from continuing the violation; or